

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SECOND NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 10, New Section 3380.1
of the General Industry Safety Orders**

Employer Duty to Pay for Personal Safety Devices and Safeguards

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which further modifications are being considered.

On January 20, 2011, the Standards Board held a Public Hearing to consider adding a new section to Title 8, General Industry Safety Orders. The Standards Board received written and oral comments on the proposed revisions. The standard was modified as a result of these comments and on February 16, 2011, a 15-Day Notice was issued.

As a result of written comments submitted in response to the 15-Day Notice of Proposed Modifications mailed on February 16, 2011, further modifications have been made.

A copy of the full text of the standard, with the modifications clearly indicated, is attached for your information.

Any written comments on these modifications must be received by 5:00 p.m. on April 1, 2011, at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to oshsb@dir.ca.gov. This proposal will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office.

Inquiries concerning the proposed changes may be directed to Marley Hart, Executive Officer at (916) 274-5721.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Date March 16, 2011

Marley Hart, Executive Officer

Further Modifications to the Original Proposal

PROPOSED MODIFICATIONS

**(Regulatory language to be deleted is shown in bold double strike-out
and, new language is shown in bold double underline.)**

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Attachment No. 1

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PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Article 10 to add new Section 3380.1 to read:

§ 3380.1. Employer Duty to Pay for Personal Safety Devices and Safeguards.

Whenever any safety order in Division 1 of Title 8 requires the provision, furnishing, use or wearing of any safety device and/or safeguard, it shall mean that the safety device and/or safeguard shall be provided at no cost to the employee.

Exceptions:

- 1. Non-specialty safety toe-protective footwear (including steel-toe shoes or steel toe boots) and non-specialty prescription safety eyewear when the employer permits such items to be worn off the job-site.**
- 2. Metatarsal guards when shoes or boots with built-in metatarsal protection is provided by the employee and used with the employer's permission.**
- 3. Logging Boots (calked boots or lug-soled boots) when required by Section 6254 of the Logging and Sawmill Safety Orders.**
- 4. Everyday clothing such as long-sleeve shirts, long pants, street shoes, normal work boots, ordinary clothing, skin creams, or other items used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.**
- 5. Personal protective equipment and safeguards that are intentionally damaged or lost by the employee.**
- 6. Where an employee provides adequate protective equipment he or she owns ~~Employee-provided protective equipment pursuant to and which meets the requirements of Section 3380(d) of these Orders=~~ the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his/her own PPE, unless the PPE is excluded by exceptions 1-5.**

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Summary and Response to Written Comments

Mr. Van Howell, Area Director, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated February 24, 2011.

Comment:

Mr. Howell indicated that upon review of the proposed modifications, the proposal appears to be commensurate with the federal Standards.

Response:

The Board thanks Mr. Howell for his comment.

Mr. J.M. MacDonald, Vice President Accident Prevention, Pacific Maritime Association, by letter dated February 28, 2011.

Comment No 1:

Mr. MacDonald stated non specialty prescription safety eyewear should be included as an exemption.

Response:

It is clearly stated in exception No. 1 that non specialty prescription safety eyewear is exempt from the employer duty to pay standard when such items are worn off the job site. Consequently, no modification of the proposal is necessary.

Comment No 2:

He stated that employee owned, upgraded and personalized PPE should be exempt from employer payment. Mr. MacDonald stated that the reference to Section 3380(d) is confusing since purchase of PPE is not pursuant to Section 3380(d).

Response:

Mr. MacDonald's comment reflects wording of 29 CFR 1910.132(h)(6). The Board agrees that these changes suggested by Mr. MacDonald will clarify the proposal and had made such changes.

Comment No 3:

Mr. MacDonald suggested separating out the last sentence of exception No. 6 into a non-bulletized follow up sentence. Mr. MacDonald stated that this would create a list of the

exemptions with an explanatory sentence saying payment is not required if the PPE meets the exemptions in Nos 1-6.

Response:

Mr. MacDonald is raising a matter of style which, in the Board's opinion, does not improve the clarity of the proposal. Consequently the Board does not believe further modifications to exception No. 6 are warranted.

The Board thanks Mr. MacDonald for his comment and participation in the Board's rulemaking process.

Mr. Bruce Wick, CALPASC, Director of Risk Management, by letter dated March 1, 2011.

Comment:

Mr. Wick suggesting modifying exception No. 6 to add "where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment."

Response:

The Board concurs with Mr. Wick and has modified Exception No. 6 to include his suggested language absolving the employer from having to reimburse the employee for adequate employee provided PPE that is necessary for the job, consistent with language in the Federal 29 CFR 1910.132(h)(6).

The Board thanks Mr. Wick for his comment and participation in the rulemaking process.

Mr. Ralph M. Armstrong, Business and Safety Representative, IBEW Local 1245 by e-mail transmission to the Standards Board received on March 1, 2011.

Comment:

Mr. Armstrong expressed concern over whether exception No. 5 (he apparently means exception No. 4) would exclude employers from having to pay for fire resistant clothing worn by electrical workers exposed to the hazard of arc flash while performing their daily duties.

Response:

Exception No. 4 is intended to address items which do not fall under the classification of personal safety devices and safeguards necessary to protect the worker mentioned in General Industry Safety Orders (GISO), Article 10. The items described in Exception No. 4 refer to articles of clothing/apparel and personal belongings such as skin creams, ordinary sunglasses, and suntan lotion which have no special employee protection function and would not be considered a safety device or safeguard required under Article 10. Consequently, non synthetic apparel as required by the Electrical Safety Orders for employees who are exposed to arc flash or flames per Sections 2320.2 (a)(8) and 2940.6(j) are considered personal devices/safeguards which employers will continue to have the duty to pay.

The Board thanks Mr. Armstrong for his comment and participation in the Board's rulemaking process.

Mr. Shane A. Gusman, California Teamsters Public Affairs Council by letter dated March 3, 2011.

Comment:

Mr. Gusman expressed concern over exception No. 1 and stated that protective footwear and safety eyewear are critical to employee safety for many employees represented by the Teamsters. Employers of Teamster represented employees have for many years complied with California law and provided mandated personal protective equipment. Mr. Gusman stated the proposed exception No. 1 appears to contradict this long standing practice, thus creating an unsafe working environment for employees. Mr. Gusman urged the Board to reject exception No.1.

Response:

The Board believes exception No. 1 is reasonable as it applies to non specialty footwear and eyewear that is worn off the premises by the employee. Teamster represented employees should not be fearful of the possibility that their employers will not furnish and pay for safety toe footwear, as required by GISO Article 10. Labor Code Section 6400 and GISO Section 3380 require the employer to provide a safe and healthful place of employment and provide all necessary personal safety devices and safeguards. Consistent with the federal exemptions, the proposal only applies to non-specialty footwear, meaning that it is either of a personal nature, or used in a manner that that does not render it unsafe for use off the jobsite or is not designed for special use on the job. Therefore, the Board believes no modification of Exception No.1 is necessary.

The Board thanks Mr. Gusman for his comment and participation in the rulemaking process.

Mr. Jeff Fairbanks, Safety Officer, Modesto Irrigation District by e-mail transmission to the Board dated March 3, 2011.

Comment:

Mr. Fairbanks requested the proposal specify whether employers must supply and pay for fire resistant outerwear/rainwear, even if the outerwear is worn home.

Response:

The Electrical Safety Orders require employees to wear apparel that will not exacerbate the effects of arc flash or fire upon the employee working on or in proximity to energized conductors. Such apparel is considered a personal safeguard and, as dictated by the language of the first paragraph of Section 3380.1, must be provided at no cost to the employee. In this case, proposed exception No. 4 which is intended to address clothing and personal effects which have no relation to providing employees safety from job specific recognized hazards would not apply.

The Board thanks Mr. Fairbanks for his comment and participation in the rulemaking process.

Mr. Bill Taylor, CSP, Public Agency Safety Management Association (PASMA) by e-mail transmission to the Board dated March 4, 2011.

Comment:

Mr. Taylor indicated expressed support for the proposed exceptions.

Response:

The Board thanks Mr. Taylor for his comment and participation in the rulemaking process.

Mr. Daniel De La Cruz, Environmental Compliance Inspector, Industrial Waste Management Inspector, City of Los Angeles by e-mail Transmission received on March 4, 2011.

Comment:

Mr. De La Cruz stated he disagreed with Exception No. 1 and stated it should not be included in the proposal. He is concerned that it would allow employers to abrogate their duty to provide employee safeguards such as safety toe foot wear for employees visiting jobsites where employees must wear such footwear.

Response:

Exception No. 1 does not abrogate the employers' responsibility to provide and pay for PPE and safeguards as required by Section 3380.1 and GISO Article 10. The use of safety toe footwear at places of employment, such as where Mr. De La Cruz conducts inspections, are examples of the use of PPE which his employer has the duty to provide and pay for. The Board believes that when an employee is an inspector and must conduct site visits to other places of employment where he/she may be exposed to the hazards of foot injuries, the use of safety footwear is necessary. Exception 1 applies in cases where the footwear is worn in non occupational situations as a matter of convenience by the employee as general footwear, in which case the employer under Exception No.1 is not responsible for payment.

The Board thanks Mr. De la Cruz for his comment and participation in the Board's rulemaking process.

Mr. Donald Jojola, City of Los Angeles, Environmental Compliance Inspector, Industrial Waste Management Division, by e-mail transmission dated March 4, 2011.

Comment:

Mr. Jojola's comment echoed that of Mr. De la Cruz indicated above.

Response:

See the response to Mr. De la Cruz's comment above.

Mr. Terry Thedell, Ph.D., CIH, CSP, Health and Safety Advisor, San Diego Gas and Electric, by e-mail transmission dated March 4, 2011.

Comment:

Mr. Thedell expressed support for the proposed exceptions.

Response:

The Board thanks Mr. Thedell for his support of the proposal and his participation in the Board rulemaking process.

Mr. Kevin D. Bland, Hines Smith Carder Dincel Bland, LLP, Counsel to the California Framing Contractors Association by e-mail transmission dated March 4, 2011.

Comment:

Mr. Bland echoed Mr. Bruce Wick's comment submitted to the Board by letter dated March 1, 2011.

Response:

See the response to Mr. Bruce Wick's written comment dated March 1, 2011.

The Board thanks Mr. Bland for his comment and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.